

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7923 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAXMICHAND S SHAH

Versus

DISTRICT PANCHAYAT

Appearance:

MR JF SHAH for Petitioner

None present for Respondents No. 1, 2

MR SR DIVETIA for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/09/97

ORAL JUDGEMENT

1. The petitioner, an ex-employee of Nagar Panchayat, Mandal, Taluka Viramgam, District Ahmedabad who retired on 1-11-1991 on reaching the age of superannuation, filed this special civil application for direction to the respondents to give him the amount of gratuity, pension etc. with interest at the rate of 18%.

2. However, the facts in detail are not required to be given as the counsel for the respondent-State made a statement before this Court that the petitioner has already been paid Rs.35000/- towards the retirement benefit as ordered by this Court on 26th August, 1997 and whatever the balance amount found payable to the petitioner towards the pension and gratuity and other retirement benefits shall be paid to him within reasonable time and all necessary papers of P.P.O. and G.P.O. will also be issued to him in the time as granted by this Court. However, the counsel for the respondent-State submitted that the respondents No.1 and 2 should have paid the amount of pension and gratuity to the petitioner but they failed to do so and the State Government is discharging their liabilities, and as such, an observation may be made by the Court that the State Government shall be entitled to deduct the amount whatever paid to the petitioner towards his retirement benefits from grant given to these two authorities by the Government. It is not necessary to enter into and decide this question in this case as in view of the decision of the Hon'ble Supreme Court in the case of R.K. Soni's matter ultimately if the District Panchayat or Nagar Panchayat who are receiving the grant-in-aid from the Government fails to discharge their duties towards their employees then it is the duty of the State Government to fulfil those obligations. If the State Government is fulfilling or discharging the obligations of the respondents No.1 and 2 then there may not be any objection or what to say a legal objection to deduct that amount by it from the grant to be paid to these authorities. Whatever liabilities of the respondents No.1 and 2 towards their employees are being discharged by the State Government then certainly the State Government has all the right and justification to deduct that amount from the grant to be paid to these authorities.

3. In view of the aforesaid statement of the counsel for the respondent-State this special civil application is directed to be disposed of in the terms that the respondent-State shall fix the amount of pension, gratuity, computation of pension and other retirement benefits within a period of four months from the date of receipt of the copy of this order. Whatever amount so determined and found payable to the petitioner should be paid to him within one month next. During this period, the respondent No.2 shall see that the petitioner's pension papers are completed in all respect and the petitioner is given the necessary pension pay order. The petitioner shall cooperate with the respondent-State in

all respect as and when he is called upon by it. It is a clear case where a low paid employee has been deprived of his pension, gratuity amount, amount of computation of pension and other retirement benefits as well as the monthly regular pension for all these years without there being any fault on his part. It is not in dispute that the petitioner's services are pensionable and in case the respondents No.1 and 2 have not discharged their liabilities then I fail to see any justification with the respondent-State not to carry out its obligations to the retired employees of the District Panchayat or Nagar Panchayat to pay them all the retirement benefits. The State Government is a welfare State and it has acted highly arbitrary in the present case. A person who served the agency of the State has been put to suffer all these agonies. His position has been rendered worse than a suspended employee who is suspended because of some serious misconduct or involvement in some criminal case. The petitioner is a person who has after rendering his sincere services to the respondent retired but he has not been paid anything towards the retirement benefits. The counsel for the respondent-State submitted that it was the duty of the respondents No.1 and 2 and now they are discharging their duties, and as such, no order should be passed for awarding the interest on the amount of the dues of retirement benefits found payable to the petitioner as well as the costs. It is true that primarily the respondents No.1 and 2 may be the authorities to fix all these things of the petitioner but after notice of this special civil application to the respondent-State, I fail to see any justification in the defence aforesaid as raised by its counsel. The respondent-State is further directed to pay the interest at the rate of 12% p.a. on all the arrears of the retirement benefits found payable to the petitioner from 9th November, 1992, the day on which this special civil application has been filed by the petitioner. This amount shall be paid along with all the arrears of the retirement benefits to the petitioner. The petitioner has unnecessarily been dragged in the litigation and instead of paying to him the retirement benefits he has been compelled to incur the expenses of litigation. This was an avoidable litigation but under the compulsion when nothing has been done by the respondents, the petitioner approached to this Court. I find sufficient justification in this case to award the costs also to the petitioner. The respondent-State is directed to pay Rs.2000/- by way of costs of this petition to the petitioner. Rs.2000/- has been awarded as the counsel for the petitioner submitted before this Court that this much amount has been incurred by the petitioner towards

the actual litigation expenses of this special civil application. However, it is made clear that the State Government is at liberty to deduct these amounts also from the grant payable to the concerned authorities. Rule is made absolute as aforesaid.

zgs/-